

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NAKIA PETTUS,	:	CIVIL ACTION NO. 1:10-CV-0562
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
UNITED STATES, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 6th day of May, 2010, upon preliminary consideration of plaintiff's *Bivens*¹ styled civil rights action pursuant to 28 U.S.C. § 1331, in which he alleges a multitude of constitutional violations (Docs. 1, 2), and it appearing that he seeks to proceed in forma pauperis (Doc. 5), 28 U.S.C. § 1915, and it further appearing that the "three strikes" provision of the Prison Litigation Reform Act of 1996 ("PLRA"), codified at 28 U.S.C. § 1915, prohibits him from proceeding in forma pauperis as he has had three prior actions or appeals dismissed as frivolous,

¹Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Bivens stands for the proposition that "a citizen suffering a compensable injury to a constitutionally protected interest could invoke the general federal-question jurisdiction of the district courts to obtain an award of monetary damages against the responsible federal official." Butz v. Economou, 438 U.S. 478, 504 (1978).

malicious, or for failing to state a viable claim², and it further appearing that there is no indictment that plaintiff “is under imminent serious physical injury,” 28 U.S.C. § 1915(g) (setting forth the three strikes rule which provides that an inmate who has three prior actions or appeals dismissed as frivolous, malicious, or for failing to state a viable claim may not proceed in forma pauperis “unless the prisoner is under imminent danger of serious physical injury”); see also Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001) (en banc), it is hereby ORDERED that:

²This court takes judicial notice of the following civil rights actions filed by plaintiff that were dismissed as legally frivolous: (1) Pettus v. Officer Lance Carlson, Civil No. 6:04-CV-384 (M.D. Fla. Sept. 29, 2004); (2) Pettus v. Officer Lance Carlson, Civil No. 04-15976-H (11th Cir. March 31, 2005); (3) Pettus v. United States, Civil No. 6:05-CV-1892-ORL-19 (M.D. Fla. Mar. 7, 2006). The fact that Pettus has three strikes was also recently recognized by the United States District Court for the District of Colorado as follows:

Magistrate Judge Boland pointed out that Mr. Pettus had initiated more than three actions or appeals in a court of the United States while he was incarcerated or detained in any facility that were dismissed as frivolous, malicious, or for failure to state a claim. On September 28, 2004, the United States District Court for the Middle District of Florida (Middle District of Florida) dismissed a complaint filed by Mr. Pettus as frivolous. See Pettus v. Officer Carlson, et al., No. 04-cv-00384 (M.D. Fla. Sept. 28, 2004). Mr. Pettus appealed to the United States Court of Appeals for the Eleventh Circuit, which dismissed the appeal as frivolous. See Pettus v. Officer Carlson, et al., No. 04-15976-H (11th Cir. March 31, 2005). Mr. Pettus then filed another complaint in the Middle District of Florida containing the same factual allegations as in No. 04-cv-00384. On March 7, 2006, the Middle District of Florida, found that the claims were frivolous, and dismissed the case with prejudice. See Pettus v. United States, et al., No. 05-cv-1892-ORL-19, 2006 WL 560162 (M.D. Fla. Mar. 7, 2006).

1. Plaintiff's motion to proceed in forma pauperis (Docs. 5) is DENIED.
2. The administrative order (Doc. 7) is hereby VACATED. The Clerk of Court shall send notice to the warden at plaintiff's present place of incarceration.
3. Plaintiff's complaint (Doc. 1) is DISMISSED without prejudice, pursuant to 28 U.S.C. § 1915(g).
4. The Clerk of Court is directed to CLOSE this case.
5. Any appeal from this order is DEEMED frivolous and not in good faith. See 28 U.S.C. § 1915(a)(3).

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge